HEARING DATE: November 1st at 10 a.m EST

OBJECTION DEADLINE: October 27th at 5 p.m EST

UNITED STATES BANKRUPTCY COURT Chapter 11 Case No. 22-10964 (MG)

SOUTHERN DISTRICT OF NEW YORK (Jointly Administered)

In re CELSIUS NETWORK LLC, *et al*[1].,

DANIEL A. FRISHBERGS' RESPONSE TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO DANIEL A. FRISHBERG'S MOTION TO COMPEL INSIDER CLAWBACKS BY THE DEBTORS/UCC

Response

Daniel A. Frishberg ("Mr. Frishberg") files this response (the "Response") to *The Official Committee Of Unsecured Creditors' Objection To Daniel A. Frishbergs's Motion To Compel Insider Clawbacks By The Debtors/UCC* [Docket No. 1212] (the "Objection"). In support of this Response, Mr. Frishberg states as follows.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); and Celsius US Holding LLC (7956). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 121 River Street, PH05, Hoboken, New Jersey 07030.

Clarification About So-called "Substantial Changes" in The Amended Motions

https://www.diffchecker.com/2Kv4pPbY

The difference between my amended clawback motion filed on 10/13/2022[2] and my second amended clawback motion filed on 10/26/2022 is negligible. If you check the above link, you will find that the vast majority of the "substantial" changes are footnote numbers being changed, and dates/date related changes, and the removal of the notice of the hearing. Less than 2 short paragraphs of new content were actually added. At first glance at the linked changes, they *seem* significant, but after closer analysis, you can tell that the majority of the changes are extremely minor and irrelevant. It does not matter if a quote is on footnote number 17 instead of footnote number 16. Also, the dates being adjusted to fit a new timeline (after the Debtors and UCC refused to consent to an expedited timeline) is a non-significant change. I do not believe that the point that was raised by the UCC is applicable, since the changes were quite minor. The reason the page number count jumped was because I changed the spacing from 1.15x to 2x, and added 2 enters/spaces in between paragraphs. For the Amended Clawback Motion, I removed the notice of the hearing (as the UCC had already so kindly filed one on my behalf), and modified the dates.

RESPONSE

The UCC stated[3]: "The Committee shares Mr. Frishberg's frustrations regarding the hardship he—and other account holders—have suffered as a result of the Celsius "Pause" and the

[2] Docket Number 1052, was filed on October 13th, 2022, after new information came out at the 341 hearing held on the same day. The Debtors/UCC allege that this provided a lack of notice, I disagree, over two weeks would have passed between the filing, and the hearing on 11/1/2022.
[3] https://cases.stretto.com/public/x191/11749/PLEADINGS/1174910272280000000084.pdf

Debtors' subsequent chapter 11 filings". While I do appreciate their understanding, their understanding does not *help* the situation. What *would* help the situation is if the UCC would help alleviate the hardships by **forcing** the Debtors to significantly cut costs, and pursue clawbacks, since backchanneling and asking the Debtors to do effectively *anything* seems to have failed, perhaps it *may* be time to **force** them to do so via litigation/the court. The UCC is correct when they state: "Although the Committee shares in the goals that appear to be animating the Motion (i.e., to obtain a return of funds wrongfully withdrawn by insiders), the Committee does not believe that the rushed and piecemeal litigation sought by the Motion is in the current best interests of account holders and unsecured creditors". As the UCC and I agree on what needs to be done, we just do not agree on how it must be done. I would agree with the UCC that the best path forward would be to do this later; if this was a traditional bankruptcy that did not contain cryptocurrency, and potentially thousands of targets for clawbacks scattered across the globe. Unfortunately it isn't a traditional bankruptcy, and involves cryptocurrencies, some of which are known for a fact to have been dissipated and converted (see my Clawback Motion for more information).

Simply (as the UCC seems to be doing) asking insiders/other people who effectively stole money (and the money that was embezzled via USA Strong/transferred from KeyFi wallets to USA Strong Wallets) to return it, has not worked so far, and I doubt it will work at all: "The Committee shares Mr. Frishberg's view that Celsius' current and former executives should return any funds that were inappropriately withdrawn from the platform during the applicable preference period. To the extent the Debtors have not yet demanded return of those funds, they

should do so". The UCC has stated that they have not received information that they requested: "However, the Committee has not received all of the discovery it has requested and intends to take additional discovery", their next steps (*assuming* they have not done so already) *should* be to subpoena them, and than if those subpoenas are refused/ignored, they should request sanctions (to be paid into the estate) and/or for the targets of the subpoenas to be held in contempt of court. It is my understanding that one does **not** *simply* ignore a discovery request, without **consequences**.

"Hearsay" And "Conjecture" <u>Do Not</u> Accurately Describe My Accusations

In footnote number 5, the UCC stated: "The Committee also notes that Mr. Frishberg levels a number of accusations against Mr. Mashinsky, his wife, and other insiders of the Debtors. The Committee is vigorously investigating the facts and circumstances that inform Mr. Frishberg's accusations, but notes that, as demonstrated in the Motion, those accusations currently rest on conjecture and hearsay and will need to be developed if claims are to be brought". I completely disagree with the UCC, the accusations were not brought on hearsay (although there is plenty of that to go around, that I could have included). They were brought on cold hard facts. As can be seen in my Motions, I provided links to various sources which had **extensive** documentation to back up my statements, including numerous links to transactions on the blockchain which show the dissipation of assets/transfer of assets which ended up in wallets controlled by insiders/insider affiliated parties. I am not sure why the UCC has been, and continues to be so nice to the Mashinsky's and various insiders. I was not there, but I heard (and a recording exists) of a Twitter space shortly after Alexander Mashinsky "resigned" where the UCC was said to have been extremely nice to him. The UCC's job is *not* to be nice to Alexander

Mashisnky and other insiders, i**t is to pursue claims and to act in the best interests of the creditors**. Alexander Mashinsky and his family/other insiders *very* likely stole assets/money from Celsius and its users, in addition to the assets they withdrew before the Pause. The extensive report from Arkham Labs which I linked in my Motion, laid out in excruciating detail exactly how, how much, and when Alexander Mashinsky and his associates/family sold "CEL" tokens (on the very exchange that Celsius bought "CEL" tokens with depositor assets).

Standing To Pursue Matters

The UCC states: "As an initial matter, the Committee cannot currently pursue these claims because it presently lacks standing to do so", if they do lack standing to pursue the claims, they should request the ability to pursue them from the court. Since the Debtors seem to be in no rush, and in my opinion do not intend to pursue any claims, it would normally be up to the UCC to do so. What is so strange/unusual/unique about this bankruptcy is that no one (including the UCC) is in any particular rush to recover the funds that were stolen and/or paid out via preferential payments. This is to the detriment of the creditors, and their recovery.

Conclusion and Reservation of Rights

I do believe that the UCC and Debtors should be compelled to commence clawbacks and cut costs. If the UCC and Debtors are unwilling or unable to do so, someone who **is** *willing* and *able* to do the Debtors job for them, should replace them, potentially as a Trustee, or as a Chief Restructuring Officer (with the powers of a Trustee, but not as a Trustee). The UCC should be

the one filing motions to compel the Debtors to commence clawbacks/cut costs, not me. I am sure that the UCC is doing plenty of work behind the scenes, but the issue is it is behind the scenes and I, and creditors cannot see it, or know what they are doing. We have been told time and time again that they are working on getting the Debtors to cut costs, but have seen little to no results. The Debtors should be **firing the executives and Special Committee, along with all non-essential workers**, and if they are not (since they seem to have no desire to do so), the UCC should be *aggressively* **forcing** them to do so **in court**. As quite a few people have told me, this is the UCC's job, and *not* a 18 year old college *freshman's* job, and that it's both hilarious and tragically sad that I am doing it for them (their[4] words, not mine). Both the UCC, and Debtors have said a lot about what they are doing/will do, but have little to show for it. *Actions speak far louder than words.*

[4] "Their" refers to various people who sent me messages.